

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES CARL KELLY,

Plaintiff,

v.

P. SULLIVAN, et al.,

Defendants.

Case No. [19-cv-00045-SI](#)

ORDER OF DISMISSAL

Re: Dkt. No. 2

On June 27, 2019, the court ordered plaintiff, James Carl Kelly, to show cause within thirty days why this action should not be dismissed under 28 U.S.C. § 1915(g), which provides that a prisoner may not bring a civil action *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The order identified three prior dismissals that appeared to count under § 1915(g), stated that plaintiff did not appear to be under imminent danger of serious physical injury when he filed the complaint, and ordered plaintiff to show cause why pauper status should not be denied and the action should not be dismissed. The order further stated that plaintiff also could avoid dismissal by paying the filing fee by the deadline.

Plaintiff did not respond to the order to show cause, and the deadline by which to do so has passed.

Each of the three earlier dismissals identified in the order to show cause counts as a dismissal for § 1915(g) purposes. Plaintiff has not paid the filing fee, has not shown that any of the prior dismissals could not be counted under § 1915(g), does not appear to have been under imminent

1 danger of serious physical injury at the time he filed this action, and has not otherwise shown cause
2 why this action could not be dismissed. For the foregoing reasons, Plaintiff's *in forma pauperis*
3 application is DENIED. Docket No. 2. This action is DISMISSED for failure to pay the filing fee.
4 The dismissal is without prejudice to Plaintiff asserting his claims in a new complaint for which he
5 pays the full filing fee at the time he files that action.

6 The clerk shall close the file.

7 **IT IS SO ORDERED.**

8 Dated: August 9, 2019

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10 SUSAN ILLSTON
11 United States District Judge
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